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HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1553rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 November 1996, at 10 a.m.

Chairman: Mr. BÁN

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1553/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Germany (continued) (HRI/CORE/1/Add.75, English only; CCPR/C/84/Add.5, English only; CCPR/C/58/A/GER; CCPR/C/58/L/GER/3)

1. The German delegation resumed its place at the Committee table.

2. The CHAIRMAN invited the members of the Committee who had not yet done so to ask further questions about the topics referred to in part II of the list of issues (CCPR/C/58/L/GER/3).

3. Lord COLVILLE, referring to freedom of expression, said that he had to revert forcefully to the question of the measures being taken against sects. He requested the German delegation to refer to paragraph 3 of the Committee's General Comment on article 18 of the Covenant (General Comment No. 22 [45]). In reply to the concerns expressed by some members of the Committee about the activities against sects being carried out in Germany, the delegation had said that Parliament was worried because sects were a danger for constitutional rights and the authorities had simply issued discrete warnings. He did not think that those were simply warnings. He had a list of publications by six Länder relating to six sects. He did not agree with the theories or the philosophy of any of those sects, but he did not think that they should be discriminated against and their followers should not be discriminated against either simply because they belonged to such sects. He questioned whether the Covenant was compatible with that type of official publication by Länder Governments. He also questioned the legitimacy of the measures which had been taken by the Bavarian Minister of Education, Culture, Science and the Arts and involved sending all schools a circular describing a particular anti-sect policy and requesting all school headmasters to report on any measures they had taken. In his view, it was unacceptable that, as of 1 November 1996, every applicant for a civil service position in Bavaria had to state whether or not he belonged to the Church of Scientology. He saw no objection if the Catholic Church and the Lutheran Church had sect specialists and tried to warn their own congreations about other beliefs, but the same was not true of government authorities and, according to the information available to him, there were "sect commissioners" in four Länder and at the federal level. It was dangerous to use government machinery to issue warnings against such groups - and, to his knowledge, there was no legislative authority for doing so. Who knew which group might be targeted later?

4. Mr. ANDO said that he would like some explanations about the implementation of the Federal Data Protection Act and the Stasi Files Act, as referred to in paragraphs 97 and 98 of the periodic report (CCPR/C/84/Add.5, English only). He wished to know how a private individual could apply to have data contained in the files disclosed, which authority decided on disclosure and whether such a decision could be appealed. The same questions arose with regard to the Stasi files.

5. Mr. BHAGWATI asked whether it was true that the Federal Government and the Länder Governments had worked out a plan to give courses, through the

German Academy of Judges, to sensitize judges against sects. He had learned that seminars had been organized to sensitize family law judges about the problem of sect-dependent parents in child custody proceedings.

6. He also wished to know whether it was true that seats on the Federal Constitutional Court were allocated for apportionment among representatives of major political parties.

7. Mrs. EVATT, referring to freedom of association (para. (h)) of part II of the list of issues and to the extent of surveillance and banning of extreme right organizations, as indicated in paragraphs 148 and 216 of the report (CCPR/C/84/Add.5, English only), said that, according to the information available to her, raids were often carried out on offices and the homes of the members of those organizations and material described as propaganda was confiscated. She asked whether there were special laws which restricted the right to privacy in that case and how it was established that the circumstances referred to in article 9, paragraph 2, of the Basic Law were met.

8. Mr. MAVROMMATIS said that, in asking the question contained in paragraph (a), namely, "What are the procedures for the implementation of any views adopted by the Committee under the Optional Protocol?", the Committee had expected the delegation to explain how decisions the Committee might take under the Optional Protocol were implemented. For example, if the Committee had determined that the claim of the author of a communication who said that he had been wrongly convicted was true and had requested the German State to release that person or grant him compensation, what procedure was followed? Were there specific criteria or would ex gratia compensation be paid? He also wished to know whether there were any differences in respect of implementation between decisions by a European body and decisions by the Committee under the Optional Protocol.

9. With regard to freedom of association, the Committee considered that the right to strike could be restricted in the case of essential services. A provision prohibiting the right to strike of members of the civil service would therefore be too general because the work done by persons having that status certainly was not all in that category.

10. Mr. WECKERLING (Germany), referring to the question of sects, said that the State had a general duty to protect citizens and warn them of any dangers. That duty derived from article 4 of the Basic Law. In fulfilling that obligation, the State had opted for the method of disseminating information brochures on sects, for example, as Lord Colville had mentioned. The Federal Constitutional Court had confirmed that such brochures were lawful in all cases. Of course, sects objected to being singled out in that way, but they had access to ordinary remedies and their representatives could apply to administrative courts and even to the highest court. His delegation could not give any information on what had happened in the Land of Bavaria, which exercised its sovereignty in that regard. It could, however, state that there were no sect commissioners at the federal level. The Länder had centres which collected information on sects and there was also a special commission of the Federal Parliament which dealt with sects. In general, freedom of religion was broadly protected in law and in practice. The seminars organized by the German Academy of Judges for family law judges were not indoctrination courses, as had been claimed in Germany, but, rather, information seminars

designed to give those judges the necessary training to deal with the cases that might come before them. The seminars all dealt with social topics and did not focus exclusively on the activities of sects. Moreover, judges in Germany were independent enough to resist any kind of indoctrination if the State tried to convince them of something.

11. Referring to the members of the Federal Constitutional Court, he said that half were elected by a Bundestag committee and the other half by the Federal Council (Bundesrat). Possible candidacies were discussed in public and all political parties represented in Parliament could put forward candidates. The aim was to establish a balance and ensure that the judges of the Federal Constitutional Court, who often had to deal with highly political issues, enjoyed substantial democratic support.

12. With regard to the power of the Ministry of the Interior to ban an association, such a measure could be taken only if it had been proven that the association had committed an offence covered by the Penal Code. That criterion was obviously applied in the case of extreme right groups, which had committed criminal acts in recent years. The ban could come only from the Federal Constitutional Court, on the initiative of the Federal Government. The last organization which had been banned had been called the Extreme Right Party, but it had not been a political party at all. The last ban against a real political party dated back to 1956, when the German Communist Party had been banned. The possibility of banning associations which had harmful activities was entirely in keeping with article 5, paragraph 1, of the Covenant, which prohibited groups or persons from engaging in any activity or performing any act aimed at the destruction of any of the rights recognized in the Covenant.

13. As to the implementation of the decisions of the European Court of Human Rights and the Human Rights Committee, the obligation to give effect to them derived not from internal law, but from the instruments establishing those bodies. In the case of the European Court of Human Rights, the obligation was contained in the decision itself, but that was not the case of the Committee, since the Covenant did not provide for any particular implementation machinery. In that sense, the Covenant had a weaker effect for States parties than the European Convention on Human Rights. Whenever a ruling was adopted under the European Convention, the German State did everything in its power to comply with it.

14. Mrs. VOELSKOW-THIES (Germany) said that the Stasi files could be consulted on application to the authorities. If the application was denied, administrative proceedings could be instituted.

15. At the preceding meeting, a member of the Committee had asked whether the report under consideration (CCPR/C/84/Add.5, English only) had been brought to the attention of non-governmental organizations. The report was described in a brochure published in several thousand copies and addressed in particular to non-governmental organizations, which had also been informed of the dates for the Committee's consideration of the report, but they had declined the invitation that had been sent to them, claiming that it would be too expensive for them to be represented.

16. Mr. HABERLAND (Germany), replying to a question on the civil service, said that civil servants were a special kind of public sector employees. For

historical reasons, there was what might be called a professional civil service, which enjoyed guarantees provided for in the Constitution, such as independence, job security and career opportunities. Employees in that category did not, however, enjoy the right to strike. That category included teachers and proposals designed to deprive them of that status and make them ordinary public sector employees had not been approved by Parliament, which continued to be committed to keeping the current system. The prohibition of the right to strike of teachers was justified by the belief that an industrial dispute must not be settled at the expense of children.

17. The CHAIRMAN thanked the German delegation for the additional information it had provided and invited the members of the Committee to make their closing statements.

18. Mr. ANDO paid tribute to the German delegation, which had answered nearly all the questions the Committee had asked. He understood the problems that had arisen as a result of the reunification of two countries governed by very different regimes for nearly half a century. That process necessarily involved a large number of conflicts of interests and ideologies. It was, however, essential to avoid any violation of the rights of part of the population in order to defend the dominant interests. He therefore trusted that everything would be done to ensure that the very useful elements of the society of the former German Democratic Republic were integrated into German society, in its interest.

19. Like other members of the Committee, he continued to be concerned about police abuse, which was usually directed at foreigners. He had taken note of the efforts being made by the Government to combat xenophobia and of the results already achieved. In that area as well, however, he hoped that the idea of security and public order would not lead to any violation of certain fundamental rights, such as the right to privacy.

20. Mrs. CHANET thanked the German delegation for the very detailed replies which it had given to the Committee's questions and which had shed light on a great many points. She would nevertheless have liked to know more about the nature of the disciplinary measures for members of the police forces who were responsible for ill-treatment and the number of cases in which such measures had been applied. With regard to pre-trial detention, she wished to know what measures the Government had taken or intended to take as a result of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The problem of former GDR officials was obviously a sensitive one and she hoped that the German delegation would send the Committee information on how the authorities decided whether or not such officials should be integrated. She also hoped that the Government would guarantee respect for the fundamental rights of all persons concerned in conditions of equality.

21. Referring to Germany's reservation to the Optional Protocol, she said that she would like the Government to reconsider its decision. In that connection, she recalled that, in its General Comment No. 24 [52], the Committee had stated that a reservation to the Covenant through the Optional Protocol was not in keeping with the rules of international law. In general, she recommended that the German authorities should review their interpretation of article 26 of the Covenant as they had formulated it, following the

adoption by the Committee of the General Comment on non-discrimination (No. 18 [37]). She was convinced, that when the Committee came to consider Germany's fifth periodic report, the process of reunification would have been completed and the report would thus give a clear idea of the human rights situation in all parts of the territory.

22. Mr. EL SHAFEI thanked the German delegation for its replies. He hoped that the German authorities would carefully reconsider their interpretation of article 26 of the Covenant in view of the difference between the way they read it and the way the Committee did. He drew attention to the fact that that difference of views might give rise to problems in future, when the Committee had to consider communications involving Germany.

23. He was also concerned about the excessive use of force by police officers and by the ill-treatment of persons in custody or in detention. Most of the complaints in that regard had been formulated by foreigners, asylum-seekers and refugees. In some cases, the acts in question seem to have been racially motivated. The German delegation had nevertheless stated that remedies for obtaining compensation were available to the victims. There was no doubt that the mechanisms available to the administrative and judicial authorities for the monitoring of the custody and treatment of detainees also had to be strengthened.

24. Mrs. EVATT thanked the German delegation for its replies. She welcomed Germany's reunification and was aware that that process had led to a number of problems with regard to the protection of human rights, some of which had not yet been solved. However, the German authorities' commitment to human rights was based on a very strong legal tradition, which offered the guarantee of a rigorous and consistent approach to matters involving such basic rights. It was nevertheless not enough to adopt satisfactory legislation in order to create a tolerant and just society. The task was a long and arduous one and she hoped that the next periodic report would reflect the progress made.

25. Mrs. VOELSKOW-THIES (Germany) thanked the members of the Committee for their very useful questions and comments, which would be taken duly into account by her country's authorities.

26. The CHAIRMAN said that the Committee had completed its consideration of the fourth periodic report of Germany. He thanked the delegation for its cooperation in a very fruitful dialogue and announced that the fifth periodic report of Germany was due on 1 August 1998.

27. The German delegation withdrew.

The public part of the meeting rose at 10.50 a.m.